vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5728 OF 2005

Christopher D'Abreo & Anr. ... Petitioners

V/s.

Joseph alias Eknath Koli & Ors. ... Respondents

Mr.G.K. Vora for Petitioners
Mr.Clive D'souza for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 5, 2005**

P.C.:

. This Petition has been filed against the order of the trial Court disallowing the interim notice by the Defendants, the Petitioners herein, for permitting them, their Architect and Assistants to take measurements of the area of the suit premises. The submission made on behalf of the petitioners is that the suit being filed on the ground of bonafide and reasonable requirement of the landlord for the suit premises, it is necessary for the Petitioners to ascertain the exact measurements of the suit premises in order to bring out the evidence of the plaintiffs i.e., the Respondents herein. In my view, the reasoning of the trial Court cannot be faulted. The submission that under section 94 of the Civil Procedure Code r/w section 151 of the Code, power

is inherent in the Court to appoint such an architect for measurement of the suit premises is in my view, without any merit.

2. Reliance is placed by the learned Advocate appearing on behalf of the Petitioners on the judgment of the Supreme Court in the case of *Vareed Jacob v/s. Sosamma Geevarghese & Ors,* **AIR 2004 SC 3992** and *Shipping Corporation of India Ltd. v/s. Machado Brothers & Ors.,* **AIR 2004 SC 2093** to submit that the interim relief of this nature can be granted. In both these judgments, the Supreme Court has ruled that granting of interim relief is matter of discretion. It is held that if the trial Court finds that in the interests of justice, interim relief should be granted, then the same can be granted under section 94 of the C.P.C. However, in my view, both the judgments do not help the petitioners. The submission of the learned Advocate for the Petitioners that interim relief is to be granted as a matter of course cannot be accepted.

3. The trial Court has, in my view, stated cogent reasons for disallowing the application. No interference is called for in the circumstances under Article 227 of the Constitution of India. Petition rejected.